

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shane Rippen,  
Appellant,

v.

Hitchcock County Board of Equalization,  
Appellee.

Case No: 13R 035

Decision and Order Affirming  
County Board of Equalization

### GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a an agricultural parcel improved with a 1,624 sq. ft. residence and a detached garage, located in Hitchcock County, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. The Hitchcock County Assessor assessed the Subject Property at \$181,510 for tax year 2013.
3. Shane Rippen (herein referred to as the “Taxpayer”) protested this value to the Hitchcock County Board of Equalization (herein referred to as the “County Board”) and requested a value of \$80,425.
4. The County Board determined that the assessed value of the Subject Property was \$181,510 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on June 16, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Thomas D. Freimuth.
7. Tim Thompson, the Taxpayer’s attorney, appeared at the hearing. Shane Rippen, the Taxpayer, was also present at the hearing.
8. D. Eugene Garner, the Hitchcock County Attorney, was present for the County Board. Judy McDonald, the Hitchcock County Assessor, and Cindy McCorkle, Deputy Hitchcock County Assessor, were also present at the hearing.

### SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The County submitted the Property Record Card (herein referred to as “PRC”) for the Subject Property for tax years 2012 and 2013.
10. Page 1 of the 2013 PRC contains the following section entitled “Assessment Value History” regarding the Subject Property:

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$14,050	\$167,460	\$181,510
2012	\$18,150	\$167,460	\$185,610
2011	\$10,920	\$173,210	\$184,130

11. As charted above, the County Board's \$181,510 determination for tax year 2013 includes \$14,050 for land and \$167,460 for the improvement components.
12. Tab A of the County's packet submitted at the hearing and Judy McDonald's "Biographical Sketch" found at Tab F indicate that the State Assessment Office performed assessment functions in Hitchcock County for tax years 2001 through 2012. Ms. McDonald served as an Assessment Assistant for the State Assessment Office for tax years 2001 through 2012, and she served as the County Assessor for tax year 2013 after the Hitchcock County assessment function reverted from State to County control on July 1, 2012.
13. The 2013 PRC and Tab A of the County's packet, together with Judy McDonald's statements, indicate that the County Assessor's \$167,460 notice value for tax year 2013 attributable to the Subject Property's improvement components is based on a cost approach mass appraisal model used by the State Appraiser in 2012.<sup>1</sup> Thus, as stated on the 2012 PRC submitted by the County, the 2013 PRC's \$167,460 total valuation of the Subject Property's improvement component is allocated to residential, which includes the residence and a detached garage.<sup>2</sup>
14. Page 1 of the 2013 PRC contains account notes indicating that the County Assessor's Office scheduled an appointment with the Taxpayer to inspect the Subject Property on June 27, 2013. The account notes, however, indicate that the Taxpayer did not appear at the Subject Property as scheduled. The Taxpayer stated that he is willing to permit an inspection, but that work commitments prevented him from meeting with the County Assessor's Office as scheduled on June 27, 2013.<sup>3</sup>
15. The Taxpayer provided PRCs and analysis for two alleged comparable properties located in Hitchcock County.
16. The Taxpayer did not dispute the County Board's valuation of the Subject Property's land component or the detached garage.
17. The Taxpayer asserted that the \$167,460 improvement value of the Subject Property's residence is unreasonable or arbitrary in comparison to the residences situated on the two properties submitted for consideration.

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<sup>1</sup> See, 2013 PRC. Page 1 of the 2013 PRC contains a section entitled "Appraised Values." The "Current" row and "Method" column coordinate contains the entry "OVR," which denotes Override of the 2013 cost reappraisal of the Subject Property's improvement components referenced at Tab A of the County's packet submitted at the hearing. The impact of this 2013 cost approach Override is that the County used the \$167,460 value set forth in the section entitled "Improvement Cost Summary" on page 1 of the 2012 PRC, rather than the \$214,710 value set forth in the same section on page 1 of the 2013 PRC. In other words, as stated at the bottom of the County's property comparison spreadsheet found at Tab D of its packet, the County Assessor's Office used the State Appraiser's 2012 improvement values for tax year 2013 rather its own 2013 reappraisal values (in contrast, this spreadsheet language also states that the land values for tax year 2013 are derived from the County Assessor's 2013 land reappraisal).

<sup>2</sup> The Commission notes that page 2 of the Subject Property's 2012 PRC indicates that the parcel includes a 1,200 sq. ft. detached garage. A review of the Marshall & Swift cost detail set forth on the page following the 2012 PRC indicates that the detached garage contributed \$24,648 (\$20.54 per sq. ft.) to the Replacement Cost New ("RCN") improvement value. Pages 1 and 2 of the 2012 PRC indicate that the RCN Less Depreciation ("RCNLD") improvement value after application of 13% depreciation amounted to \$167,460 for tax years 2012 and 2013.

<sup>3</sup> The Commission notes that Tab A of the County's packet submitted at the hearing indicates that the County Assessor "was denied access by the taxpayer" for inspection purposes. The County Assessor stated at the hearing that this "denial" language was authored by Nebraska Department of Revenue staff and does not accurately reflect her interaction with the Taxpayer. Rather, the County Assessor indicated that the account notes set forth at the bottom of page 1 of the Property Record Card provide a more accurate description of the interaction between her office and the Taxpayer.

18. The County submitted the following documents at the hearing: (1) 2012 and 2013 PRCs for the Subject Property, the County Assessor's three alleged comparable properties, and one of the two Taxpayer alleged comparable property (Waugh);<sup>4</sup> (2) spreadsheet found at Tab D that compares the 2013 assessed values of the Subject Property with the County's three alleged comparable properties and the Waugh Property; and (3) tables found at Tab E that set forth costing and depreciation parameters for the Subject Property's residence.
19. The County Assessor asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.
20. The County Assessor's statements and Tab A of the County's packet indicate that the section entitled "Improvement Cost Summary" contained on the 2013 PRCs of the two properties submitted for consideration by the Taxpayer are not correct, and that the correct information is contained on the 2012 PRCs.

### **STANDARD OF REVIEW**

21. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>5</sup> "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."<sup>6</sup>
22. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>7</sup> That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."<sup>8</sup>
23. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>9</sup>
24. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>

### **GENERAL VALUATION LAW**

25. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>11</sup>

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<sup>4</sup> The County Assessor stated that the Lewis property submitted for consideration by the Taxpayer is improved with a mobile home and is valued under different cost approach parameters as compared to the Subject Property.

<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2013 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>6</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>10</sup> *Omaha Country Club v. Hitchcock Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

26. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>12</sup>
27. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.<sup>13</sup>
28. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>14</sup>
29. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>15</sup>
30. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>16</sup>

### VALUATION ANALYSIS

31. The Taxpayer asserted that the County overvalued the Subject Property’s residence. In support of this assertion, the Taxpayer submitted PRCs and analysis regarding the assessments of two Hitchcock County parcels.
32. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>17</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>18</sup> The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
33. The Form 422A found at Tab B of the County’s packet provides that the County Assessor issued a recommendation to the County Board to adopt its \$181,510 notice value, which includes its \$167,460 valuation of the Subject Property’s improvement components. The Form 422A indicates that this recommendation is based on the Taxpayer’s failure to meet with the County Assessor’s Office as scheduled for inspection purposes on June 27, 2013. The County Board adopted the County Assessor’s \$181,510 recommendation regarding the actual value of the Subject Property for tax year 2013.

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<sup>11</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>12</sup> *Omaha Country Club v. Hitchcock County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).  
<sup>13</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>14</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>15</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>16</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>18</sup> *Id.*

34. The Taxpayer stated that while he is willing to permit an inspection of the Subject Property, he was unable to meet with the County Assessor's Office as scheduled on June 27, 2013.
35. The County's packet indicates that the County Assessor's \$167,460 recommendation regarding the Subject Property's improvement components adopted by the County Board for tax year 2013 is calculated through the use of the State Appraiser's 2012 valuation based on the cost approach. The cost approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.<sup>19</sup> Additionally, the PRCs found at Tab C and tables found at Tab E of the County's packet set forth costing and depreciation parameters for the Subject Property's residence. A review of the Subject Property's PRCs found at Tab C indicates that these Tab E parameters are not applied by the County in an unreasonable or arbitrary manner based on the information in its files regarding improvement components.
36. Based on a review of the documents and statements submitted at the hearing, the Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's determination is unreasonable or arbitrary or grossly excessive for tax year 2013.

### GENERAL EQUALIZATION LAW

37. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."<sup>20</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>21</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>22</sup>
38. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>23</sup>
39. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>24</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>25</sup>
40. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>26</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the

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<sup>19</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>20</sup> Neb. Const., Art. VIII, §1.

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>22</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>23</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>24</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>25</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>26</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>27</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>28</sup>

41. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>29</sup>

## EQUALIZATION ANALYSIS

42. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>30</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>31</sup>
43. For equalization analysis purposes, the Taxpayer submitted PRCs and analysis for two parcels. The Taxpayer asserted that the improvement components of the Subject Property should be equalized with these two alleged comparable parcels.
44. While the Taxpayer’s two properties submitted for consideration are not identical to the Subject Property, the PRCs indicate that the improvement components of the Subject Property and the alleged comparable properties were valued using the State Appraiser’s Computer Assisted Mass Appraisal (“CAMA”) system, which performs a mass appraisal cost approach.
45. A review of the PRCs for the Subject Property and the alleged comparable properties indicates that similar physical elements located on the parcels were valued at the same material level, and that differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.<sup>32</sup>
46. A review of the PRCs submitted by the Taxpayer indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The characteristics of the properties submitted for consideration vary. Relief based on a review of the assessed value per square unit is only applicable where properties are substantially similar.
47. The Commission finds that the Taxpayer’s alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization relief.
48. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was less than 100% for tax year 2013. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.

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<sup>27</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>28</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>29</sup> *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>30</sup> See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>31</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>32</sup> See, *Id.*

## **CONCLUSION**

49. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
50. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

## **ORDER**

### **IT IS ORDERED THAT:**

1. The Decision of the Hitchcock County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.
2. That the taxable value of the Subject Property for tax year 2013 is:

Land	\$ 14,050
Improvements	\$167,460
Total	\$181,510

3. This decision and order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2013.
7. This order is effective on October 10, 2014.

Signed and Sealed: October 10, 2014.

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Thomas D. Freimuth, Commissioner